

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

**AUNKH RA AUNKHOTEH
a.k.a. Khalifa K. Ahdnahd**

PLAINTIFF

V.

CIVIL ACTION NO. 5:09cv103-DCB-MTP

BRUCE PEARSON

DEFENDANT

ORDER

THIS MATTER is before the court on the Plaintiff's Motion [27] for Reimbursable litigation Expenses and Motion [28] to Hold in Abeyance. Having considered the motions and the applicable law, the court finds that the motions should be DENIED.

In his Motion [27] for Reimbursable Litigation Expenses, Plaintiff claims he is entitled to reasonable litigation expenses pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A). That statute provides as follows: "Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A). Plaintiff has not prevailed in this action, and is not the "prevailing party." Accordingly, this motion is premature and should be denied. Thus, Plaintiff's Motion [28] to Hold in Abeyance the instant Motion [27] pending the resolution of this matter should be denied as moot. Accordingly,

IT IS, THEREFORE, ORDERED:

1. Plaintiff's Motion [27] for Reimbursable litigation Expenses is DENIED, without prejudice to re-file in the event Plaintiff prevails in this matter.
2. Plaintiff's Motion [28] to Hold in Abeyance is DENIED.

SO ORDERED this the 25th day of February, 2010.

s/ Michael T. Parker

United States Magistrate Judge